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8

9
10 **UNITED STATES DISTRICT COURT**
11
12 **NORTHERN DISTRICT OF CALIFORNIA**
13

14 S. WESTRON, and
15 J. MILNE,

16 Plaintiffs,

17 v.

18 ZOOM VIDEO
19 COMMUNICATIONS, INC., a
20 Delaware corporation,

21 Defendants.
22
23
24
25
26

Case Number:

4:22-cv-03147-YGR

**RESPONSE TO ORDER TO SHOW
CAUSE RE: MONETARY SANCTIONS
[Document 26]**

CLASS ACTION

TABLE OF CONTENTS

	<u>PAGE</u>
INTRODUCTION.....	5
Format.....	6
Defendant’s Other Claims.....	8
CONCLUSION.....	20

TABLE OF AUTHORITIES**PAGE****CASES**

<i>Bhatia v. Office of U.S. Atty., Northern Dist. of Cal.</i> , 2011 WL 1298763 (N.D. Cal. 2011).....	20
<i>Negrete-Ramirez v. Holder</i> , 741 F.3d 1047 (9 th Cir. 2014).....	7
<i>Marshall v. Gates</i> , 44 F.3d 722 (9 th Cir. 1995).....	19
<i>Meyer v. T-Mobile USA Inc.</i> , 2012 WL 2906051 (N.D. Cal. 2012).....	19-20
<i>PSM Holding Corp. v. National Farm Financial Corporation</i> , 2013 WL 12080306 (C.D. Cal. 2013).....	19

FEDERAL RULES OF CIVIL PROCEDURE

Rule 23(a), Fed.R.Civ.P.....	6
Rule 23(b), Fed.R.Civ.P.....	6
Rule 26(f), Fed.R.Civ.P.....	8, 13
Rule 26(f)(3), Fed.R.Civ.P.....	6-7, 17, 19-20

FEDERAL RULES OF EVIDENCE

Rule 201(f), Fed.R.Evid.....	19
------------------------------	----

LOCAL RULES, NORTHERN DISTRICT OF CALIFORNIA

Civil L.R. 3-4(c).....	15
Civil L.R. 3-4(c)(2)(B).....	7
Civil L.R. 16-8.....	6-7, 17, 20
Civil L.R. 16-9.....	6, 17, 20
Civil L.R. 16-9(b).....	6, 7
Civil L.R. 16-9(b)(3).....	6

TABLE OF AUTHORITIES
(Continued)

PAGE

ADR RULES, NORTHERN DISTRICT OF CALIFORNIA

ADR L.R. 3.5(d)(1).....

OTHER AUTHORITY

Standing Order for All Judges of the Northern District of California –
Contents of Joint Case Management Statement (“**Standing Order**”).....6-8, 17, 20

Central District Local Rule 11-3.1.1.....7-8

Southern District Local Rule 5.1(a).....8

1 This Response to Order to Show Cause re: Monetary Sanctions is filed on
2 behalf of Plaintiffs, S. Westron and J. Milne (**hereinafter “Plaintiffs”**):

3
4 **INTRODUCTION**

5 The Court’s Order raises two issues, *viz.*: (a) failure to comply with this
6 District’s Local Rules regarding the preparation of the case management statement;
7 and (b) “... basic professional courtesy in terms of sharing editable documents.” The
8 Court has directed a particularized response to the following statement Defendant has
9 inserted into the Case Management Statement:

10 “Plaintiffs insisted on structuring this report in a way that departs
11 from the Court’s Standing Order and that greatly increases the length of
12 this report, *e.g.*, by including duplicative sections, quoting in full each
13 section’s requirements, and using 14-point font. Zoom repeatedly asked
14 Plaintiffs’ counsel to agree to streamline the document to avoid
15 duplication and to make it shorter, but Plaintiffs’ counsel repeatedly
16 refused without justification. Plaintiffs’ counsel also repeatedly refused
17 to give Zoom a version of the document it could edit, hindering attempts
18 by Zoom to fix formatting. In order to provide the Court with a joint
19 report and to minimize the burden on the Court, Zoom decided to
20 overlook these disagreements but has attempted to address each topic
21 only once, starting with Section 8 below.”

22 (*See, ex rel.*, Case Management Statement, Document 25, at 2:20-28.)

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24 ///

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26 ///

Format: The Case Management Statement begins with the matter which is expressly required by Rule 26(f)(3) of the Federal Rules of Civil Procedure. That matter is a Paragraphs 1 through 6, and it is set out in the same order as Rule 26(f)(3), itself.

Paragraphs 7 through 32 of the Case Management Statement sets out exactly what is required by the Local Rules of this Court, and does so in the exact order listed in Civil L.R. 16-8 through 16-9. Paragraph 7 pertains to ADR, and is inserted pursuant to ADR L.R. 3.5(d)(1), which provides, *inter alia*:

“... Counsel must include in their joint case management statement a report on the status of ADR, specifying which ADR process option they have selected and a proposed deadline by which the parties will conduct the ADR session or, if they do not agree, setting forth which option and timing each party prefers. ...”

(See, ADR L.R. 3.5(d)(1).)

Paragraphs 8 through 28 are the twenty-one (21) separate items expressly required by the Standing Order for All Judges of the Northern District of California – Contents of Joint Case Management Statement (**hereinafter the “Standing Order”**):

https://www.cand.uscourts.gov/wp-content/uploads/judges/Standing_Order_All_Judges_11.1.2018.pdf

... and they are set out in the exact order listed therein.

Paragraphs 29 through 32 set out the material required by Civil L.R. 16-9(b) in regard to proposed class actions. Civil L.R. 16-9(b)(3) requires, “Facts showing that the party is entitled to maintain the action under Fed. R. Civ. P. 23(a) and (b) ...” Civil L.R. 16-9(b)(3) demands a lot of information, and Plaintiffs have provided only what that Rule requires.

1 Plaintiffs’ undersigned counsel did not understand that the matter required by
2 the Local Rules of this Court are to be *in lieu of*, and not in addition to, the matter
3 expressly required by Rule 26(f)(3) of the Federal Rules of Civil Procedure.
4 Plaintiffs’ undersigned counsel has not located any language within Local Rules of
5 this Court which suggest that the matter expressly required by Rule 26(f)(3) of the
6 Federal Rules of Civil Procedure should have been excluded, or somehow inserted
7 into the paragraphs required by the Local Rules of this Court. The Standing Order
8 commands that, “[t]he parties ***must include*** ...”, the twenty-one (21) items enumerated
9 therein. (Emphasis added.) It does **not** state that they are *in lieu of* either the matter
10 expressly required by Rule 26(f)(3) of the Federal Rules of Civil Procedure, or the
11 matter expressly required by Civil L.R. 16-8 and Civil L.R. 16-9(b) (and its subparts),
12 or the matter expressly required by ADR L.R. 3.5(d)(1). Plaintiffs’ undersigned
13 counsel interpreted the requirements of these various rules as separately applicable,
14 because to consider the Standing Order to be the exclusive list of required contents
15 would have rendered mere surplusage the similar (and perhaps overlapping)
16 requirements of Rule 26(f)(3), Civil L.R. 16-8 and Civil L.R. 16-9(b), and ADR L.R.
17 3.5(d)(1). *Cf.: Negrete-Ramirez v. Holder*, 741 F.3d 1047, 1053 (9th Cir. 2014),
18 applying the, “... basic principle of statutory interpretation that legislative enactments
19 should not be construed to render their provisions mere surplusage.” (Citation,
20 internal quotation marks, and attribution omitted.) Plaintiffs’ undersigned counsel’s
21 reliance upon this “basic principle” of statutory construction was both objectively
22 reasonable, and in good faith.

23 The use of a 14-point typeface is expressly permitted by the Local Rules of this
24 Court. Civil L.R. 3-4(c)(2)(B) directs that documents shall be, “... in 12 point type ***or***
25 ***larger*** ...” (See, Civil L.R. 3-4(c)(2)(B). [Emphasis added.]) Other federal courts
26 within this Circuit ***require*** use of 14-point text. (See, e.g., Central District Local Rule
27

1 11-3.1.1. [... 14-point or larger ...].) (*See, e.g.*, Southern District Local Rule 5.1(a).
2 [... no smaller than 14-point standard font ...].)

3 Plaintiffs' undersigned counsel is unaware of how the format of the Case
4 Management Statement might not be in compliance with the plain language of the
5 Local Rules of this Court, including the incorporated Standing Order. It is clear from
6 the Court's Order to Show Cause that this Court has concluded that it is *not* in
7 compliance. Plaintiffs' undersigned counsel is hopeful that the Court might please
8 provide some guidance on the formatting issue in its forthcoming order re: monetary
9 sanctions.

10
11 **Defendant's Other Claims:** Defendant's other claims are either untrue or
12 grossly exaggerated. All communication between counsel subsequent to the Rule
13 26(f) conference has been by e-mail. (*See*, Gallo Declaration, at ¶ 4.) Relevant e-
14 mails are attached within Exhibit "A" to the accompanying Gallo Declaration, and will
15 be quoted herein.

16 As a preliminary matter, the Court should be aware that counsel for the
17 opposing sides use different word processing programs, which creates incompatibility.
18 Plaintiffs' undersigned counsel uses WordPerfect (a Corel product); Defendant's
19 counsel uses Microsoft Word. (*See*, Gallo Declaration, at ¶ 6.) WordPerfect can open
20 a Word document, but formatting, paragraph auto-numbering, headings, and footers
21 are often lost or distorted, and random codes are often inserted into the document; all
22 these make it very difficult to accurately convert a court pleading from Word to
23 WordPerfect. (*See*, Gallo Declaration, at ¶ 7.) (Court pleadings are complex
24 documents, containing numbered lines, footers, case captions, *etc.*)

25 At the parties' Rule 26(f) conference, Plaintiffs' undersigned counsel undertook
26 to send a draft proposed Case Management Statement to Defendant's counsel by
27

Monday, 29 August 2022. (*See*, Gallo Declaration, at ¶ 8.) It was completed and sent the prior Friday (*i.e.*, three days early), but *initially* only sent as a pdf. (*See*, Gallo Declaration, at ¶ 8.)

Plaintiffs’ undersigned counsel’s transmittal e-mail states, *in toto*:

“Counsel,

“I have managed to get the attached to you three calendar days early, although I would like to have been able to get it to you earlier in the day. (I just barely managed to finish it now.)

“As we discussed during our Rule 26(f) conference:

“(a) Defendant should send me its inserts, and I will incorporate them and send the document back to you for verification. **As we use WordPerfect, and not Microsoft Word, please send Defendant's inserts as both pdf, and plain text in the body of an e-mail.**

“(b) I am willing to discuss with you any changes to language in any of Plaintiffs’ Views and Proposals which might enable us to create one or more joint Proposals.

“When Defendant sends its inserts, please be sure to number them from 1 through 32, so I will know where to place each one within the document.

“Thank you,

“David Gallo”

(*See*, E-mail of Friday, 26 August, 1847 hours, Gallo Declaration, Exhibit Page 5.)

Defendant responded as follows:

“David -

“Thank you for the draft.

“Please send us a WordPerfect or Word version of the document

1 that we can edit.

2 “We did not discuss point (a) below at all during our conference
3 on Monday. Having Zoom only being able to ‘edit’ a joint submission by
4 sending you suggested edits in the body of an email or in a PDF that you
5 will then add to the master document is not workable, joint, or fair in any
6 fashion, let alone for a joint submission with 32 separate parts. It will
7 necessarily create substantial inefficiencies for both sides and significant
8 prejudice to Zoom.

9 “Ben”

10 (*See*, E-mail of Saturday, 27 August, 0915 hours, Gallo Declaration, Exhibit Page 6.)

11 **Plaintiff responded as follows:**

12 “Counsel,

13 “I will gladly do that as long as we agree as follows:

14 “(a) Defendants will not make any changes whatsoever to the
15 ‘Plaintiffs’ Views and Proposals’, but will only insert ‘Defendants’
16 Views and Proposals’ in the appropriate places; and

17 “(b) the document will be returned to me in Corel WordPerfect,
18 as currently formatted, for review. Defendant will not under any
19 circumstances convert the document to Microsoft Word.

20 “There may be changes or additions Plaintiffs would thereafter
21 make to Plaintiffs’ portion based upon Defendant’s insertions. If that
22 were to occur, we would send you a redline and you would have an
23 opportunity to make responsive changes or additions to Defendant’s
24 portion.

25 **“Is that agreed?”**

26 “David Gallo”

1 (See, E-mail of Saturday, 27 August, 1201 hours, Gallo Declaration, Exhibit Page 7.)

2 **Defendant responded as follows:**

3 “David –

4 “We can’t agree to #2 because we use Word, so it would defeat the
5 purpose of a working copy if we were not allowed under any
6 circumstances to convert to Word.

7 “Why don’t you send the WordPerfect copy, we will work on our
8 sections in the doc and then we will send you a PDF of our edits together
9 with a Word version, which we understand you can open in WordPerfect.
10 We may also have a tool at the firm that will allow us to convert to
11 WordPerfect, but we’re still investigating (apparently Word can open
12 .wads but cannot save back into that format).

13 “That way you get what you requested in the first instance (a PDF
14 copy with our edits shown) and you also will have a working copy that
15 you should be able to copy-and-paste from into the live doc.

16 “Ben”

17 (See, E-mail of Sunday, 28 August, 0954 hours, Gallo Declaration, Exhibit Page 8.)

18 **Plaintiffs responded as follows:**

19 “Counsel,

20 “I don’t understand why you can’t just send inserts of Defendant’s
21 language and Plaintiff can insert them into the document. What are your
22 concerns? You may be assured that we will input what you send
23 faithfully, and I will get it back to you rapidly so you can verify that this
24 has been done correctly. A pdf is searchable, and can even be made into
25 a Word document if you need that later for some reason.

26 “David Gallo”
27

1 (See, E-mail of Sunday, 28 August, 2241 hours, Gallo Declaration, Exhibit Page 9.)

2 **Defendant responded as follows:**

3 “Because we need to run it by our client and you are forcing us to
4 have them review either two separate documents or have us copy and
5 paste unformatted [*sic*] text from PDF into a Word document, reformat
6 the whole thing, then send them the doc.

7 “I don’t see why you won’t send us the WordPerfect copy. You
8 will end up in the same place, where you can just copy and paste our
9 inserts into your working copy - as I mentioned, we can send you a PDF
10 with our insertions shown like you originally requested. You’re just
11 causing us to do a lot more work for nothing.

12 “Another alternative is we file two totally separate documents and
13 we inform the court that you wouldn’t send us a document we could edit
14 for what is supposed to be a joint report.”

15 (See, E-mail of Monday, 29 August, 0658 hours, Gallo Declaration, Exhibit Page 10.)

16 **At 2:07 p.m. on Monday, 29 August, Plaintiffs’ undersigned counsel sent**
17 **the WordPerfect version as requested,** notwithstanding Plaintiffs’ undersigned
18 counsel’s well-founded concern that Defendants’ counsel would convert the document
19 from its native format into Microsoft Word (which would create more work for
20 Plaintiffs’ side in finalizing the document in WordPerfect for conversion to pdf for
21 filing). (See, Gallo Declaration, at ¶ 9, at Exhibit Page 11 thereto.)

22 **Plaintiffs’ undersigned counsel’s transmittal e-mail states, *in toto*:**

23 “Next time, if you give the explanation up front, it could save us
24 some time.

25 “David Gallo”

26 (See, E-mail of Monday, 29 August, 1407 hours, Gallo Declaration, Exhibit Page 11.)

1 Defendant has now reported to this Court:

2 “Plaintiffs’ counsel ... repeatedly refused to give Zoom a version of the
3 document it could edit, hindering attempts by Zoom to fix formatting.”

4 (*See, ex rel.*, Case Management Statement, Document 25, at 2:24-26.)

5 Defendant’s above-quoted report is inaccurate. The parties were negotiating a
6 means to overcome Defendant’s counsel’s use of an incompatible word processing
7 program. Defendant has failed to disclose this important incompatibility issue to the
8 Court. Nowhere in the written communications – which are the exclusive
9 communications – did Plaintiffs’ undersigned counsel ever refuse to provide a word-
10 processed version. Defendant *first* requested the WordPerfect version on **Saturday**,
11 27 August (*see*, E-mail of Saturday, 27 August, 0915 hours, Gallo Declaration, Exhibit
12 Page 6), and *Plaintiff sent it at 2:07 p.m. on the very next Court day, Monday*, 29
13 August (*see*, Gallo Declaration, at ¶ 9). The WordPerfect version was provided on the
14 date by which Plaintiffs’ undersigned counsel had initially undertaken (during the
15 Rule 26(f) conference) to provide an initial draft case management statement.
16 (*See*, Gallo Declaration, at ¶¶ 8-9.)

17 Two days later, on Wednesday, 31 August, Defendant sent the document back,
18 with Defendant’s positions inserted. It is important to note that the version Defendant
19 sent back was in the same long format that Plaintiff had created (although it would
20 have omitted quotations from the rules which set out the requisite contents of the case
21 management statement).¹ The redlined version Defendant sent that day is reproduced
22 at Exhibit “B” to the Gallo Declaration, at Exhibit Pages 19 through 62.

23
24 ¹ It was, and is, the view of Plaintiffs’ undersigned counsel that
25 quotations from the rules which set out the requisite contents of the case
26 management statement are helpful to the Court. They certainly were intended to
27 be helpful to the Court, so the Court would not have to refer to a separate
document to ascertain the requisite contents of the case management statement.

1 **Defendant's counsel's transmittal e-mail states, *in toto*:**

2 "David,

3 "Thanks for sending the WordPerfect copy. By the time you sent
4 it, we had already converted to MS Word (please send us the Word
5 Perfect version at the outset in the future). We are sending you back: (1)
6 a PDF redline reflecting all of our section inserts and additional edits, the
7 reasoning for which is described below, (2) a 'clean' PDF, and (3) a Rich
8 Text version so you can copy and paste our insertions.

9 "We want to flag these bigger picture revisions:

10 "We've added section numbers and descriptive headings for
11 readability. We also revised the format of sub-headings (removing
12 bolding) to ensure the numbered, bolded headings act as signposts for the
13 Court.

14 "Adding those descriptive headings confirmed Sections 1-7 are
15 largely duplicative of the sections below. For example, ADR is currently
16 addressed in Section 7 and again in Section 19. Please delete Sections
17 1-7 and incorporate below what is not duplicative in those sections.
18 Please confirm you will implement this, and then we will plan to do the
19 same for our Sections 1-7.

20 "With descriptive headings, the descriptions of each section's
21 requirements are unnecessary, and it's not normal to include them since
22 the court is very familiar with the requirements. Since they add to the
23 document's length, we are deleting them.

24 "In a handful of sections, we agree with your position, and thus
25 we've proposed agreement language for you to implement in lieu of our
26 two different 'views.' We believe the court will want this, as we
27

discussed on our call. See Sections 1 (unless you delete, per the second bullet above), 13, 14, 27, 28. See also Section 24 (proposed introduction language).

“We added our signature block to the caption page.

“We changed the font to size 12, which is the minimum required per L.R. 3-4(c) and standard practice in this district.

“Globally, we’ve fixed Defendants’ to Defendant’s in headers (as there is only one defendant).

“We are happy to discuss on a call if easier. Thank you.

“Darina”

(See, E-mail of Wednesday, 31 August, 2115 hours, Gallo Declaration, Exhibit Page 12.)

Plaintiffs’ undersigned counsel then accurately transferred Defendant’s inserted language into the WordPerfect document, and sent both the pdf *and the WordPerfect document* back to Defendant’s counsel. (See, Gallo Declaration, at ¶ 11.)

Plaintiffs’ undersigned counsel’s transmittal e-mail states, in toto:

“Counsel,

“We have endeavored to insert Defendant’s views as set out in the document sent to us yesterday.

“We have adopted all proposed agreed statements.

“We have inserted Defendant’s section numbers and headings, while retaining our quotations from the applicable rules.

“We replaced all references to ‘Defendants’ ’ with references to, ‘Defendant’s’, including in Defendant’s language.

“We have retained Plaintiffs’ stylistic judgments, such as text size and bolding of certain headers. If you believe these are inappropriate, I

1 will take responsibility with the Court.

2 “Attached is the proposed final pdf for filing, as well as a
3 WordPerfect version for your convenience in later access to the
4 document.

5 “Please review the attached to confirm that we have properly
6 inserted Defendant’s language, and please advise whether the document
7 may be filed.

8 “If you advise that the document may be filed, I propose that we
9 file it without delay, one or two court days early.

10 “Thanks,

11 “David Gallo”

12 (*See*, E-mail of Thursday, 1 September, 1440 hours, Gallo Declaration, Exhibit Page
13 13.)

14 It was at this point that Defendant demanded for the first time that the order of
15 matters set out in the report be changed – this was after Defendant had already sent a
16 proposed final document in the same order as Plaintiffs’ draft. (*See*, Exhibit “B” to
17 Gallo Declaration, at Exhibit Pages 19 through 62.)

18 **Defendant’s e-mail states:**

19 “David –

20 “We are reviewing for content. But **we insist** that the report (a)
21 follow the order set forth in the Standing Order for All Judges of the
22 Northern District of California, (b) does not include the notes on content
23 from the Standing Order, and (c) is in 12 point font. Judges here are used
24 to receiving the 26(f) report in that format (which is no doubt the reason
25 why they put it in an Order). And Judge Gonzalez Rogers’s Standing
26 Order, Section 6 specifically says that ‘The format shall follow the
27

1 Standing Order for All Judges of the Northern District of California re:
2 Contents of Joint Case Management Statement (“CAND CMC
3 Order”).’ In addition, the ND Cal Standing Order says that ‘except in
4 unusually complex cases, [the report] should not exceed ten pages:’
5 “Ben”

6 (*See*, E-mail of Thursday, 1 September, 1525 hours, Gallo Declaration, Exhibit Page
7 14. [Emphasis added.])

8 Plaintiffs would note here that the parties agree that the Case Management
9 Statement should comply with all rules and orders of the Court. However, as
10 explained above, the Case Management Statement is exactly as prescribed by Rule
11 26(f)(3) of the Federal Rules of Civil Procedure, Civil L.R. 16-8 through 16-9, and the
12 Standing Order. It includes all information required by those rules and that order, in
13 the same order set out in those rules and that order. It was also understandably quite
14 vexing for Defendant to “insist” that the order of the Case Management Statement be
15 changed after Defendant had already sent a proposed final document in the original
16 order – and the filing deadline was approaching. (*See*, Exhibit “B” to Gallo
17 Declaration, at Exhibit Pages 19 through 62.)

18 Plaintiffs’ undersigned counsel’s next e-mail does reveal a bit of frustration, and
19 mirrors the strident language which Defendant’s counsel had used (*i.e.*, “insist”).

20 **That e-mail states, *in toto*:**

21 “We insist that it be filed in the current format. Let me know if I
22 should file it, or if I should report to the Court that the parties could not
23 agree on a joint report.

24 “David Gallo”

25 (*See*, E-mail of Thursday, 1 September, 1623 hours, Gallo Declaration, Exhibit Page
26 15.)

1 Defendant responded by sending a revised draft, which, *inter alia*, withdrew
 2 many of the agreed joint statements which had been included in Defendant's prior
 3 draft (all of which Plaintiffs had previously accepted). Defendant's revised draft is
 4 reproduced at Exhibit "C" to the Gallo Declaration, at Exhibit Pages 63 through 103.
 5 This is the point at which Defendant's footnote 1 first appeared in the circulating
 6 drafts. (*See*, Gallo Declaration, at Exhibit Page 65.)

7 **Defendant's transmittal e-mail states, *in toto*:**

8 "David,

9 "In light of your refusal to edit the structure of the report to
 10 streamline it for the Court's benefit, we have made further edits to our
 11 sections. These are attached in both an RTF format and a PDF showing
 12 our edits in track changes.

13 "Please implement and recirculate to us for review before filing.

14 "Thanks,

15 "Darina"

16 (*See*, E-mail of Friday, 2 September, 1106 hours, Gallo Declaration, Exhibit Page 16.)

17 Plaintiffs' undersigned counsel then *again* accurately transferred all of
 18 Defendant's changes into the WordPerfect document, and sent both the pdf *and the*
 19 *WordPerfect document* to Defendant's counsel. (*See*, Gallo Declaration, at ¶ 13.)
 20 (Please note that Plaintiffs had made absolutely no changes to their version of the
 21 document from the time it had originally been sent to Defendant's counsel for review;
 22 Defendant was the only party demanding sequential changes to its own language.)

23 **Plaintiffs' undersigned counsel's transmittal e-mail states, *in toto*:**

24 "Counsel,

25 "Attached please find proposed joint case management statement,
 26 in both pdf and WPordPerfect [*sic*].

1 “I have endeavored to make the changes exactly as I understood
2 you to want them.

3 “Please advise whether I am authorized to file the attached.

4 “If it is filed before Monday, I will change the date at time of
5 filing.

6 “Thank you,

7 “David Gallo”

8 (*See*, E-mail of Friday, 2 September, 1622 hours, Gallo Declaration, Exhibit Page 17.)

9 Defendant then approved the document, and it was filed. (*See*, E-mail of Friday,
10 2 September, 1739 hours, Gallo Declaration, Exhibit Page 18.)

11 Defendant has now reported to this Court:

12 “... Zoom repeatedly asked Plaintiffs’ counsel to agree to streamline the
13 document to avoid duplication and to make it shorter, but Plaintiffs’
14 counsel repeatedly refused without justification. ...”

15 (*See, ex rel.*, Case Management Statement, Document 25, at 2:22-24.) It is true that
16 Defendants asked that Plaintiffs delete the matter which is expressly required by Rule
17 26(f)(3) of the Federal Rules of Civil Procedure. (*See*, E-mail of Wednesday, 31
18 August, 2115 hours, Gallo Declaration, Exhibit Page 12.) It was, and is, the
19 understanding of Plaintiffs’ undersigned counsel that the Federal Rules of Civil
20 Procedure cannot be overruled by a local rule.² Defendant’s demand that Plaintiffs
21

22 ² *See, Meyer v. T-Mobile USA Inc.*, 2012 WL 2906051. *3 (N.D. Cal.
23 2012). (Holding that Rule 201(f), Fed.R.Evid., takes precedence over local rules.)
24 *Meyer* cited and quoted *Marshall v. Gates*, 44 F.3d 722 (9th Cir. 1995), which
25 stated, “We are ... under an obligation to construe local rules so that they do not
26 conflict with the federal rules, and we have exercised our ingenuity in doing so ...”
27 *See, Marshall v. Gates*, 44 F.3d, at 725. *See also, PSM Holding Corp. v. National*
Farm Financial Corporation, 2013 WL 12080306, * 19 (C.D. Cal. 2013) (*citing*

omit prescribed material was therefore unjustified.

As noted above, the Case Management Statement is exactly as prescribed by Rule 26(f)(3) of the Federal Rules of Civil Procedure, Civil L.R. 16-8 through 16-9, and the Standing Order. It includes all information required by those Rules and the Standing Order, in the same order set out in those rules and that Order. There was never a dispute that the Case Management Statement must comply with all applicable rules – the dispute was, and is, how those various rules either do or do not displace each other.

CONCLUSION

Plaintiffs’ undersigned counsel’s positions, statements, and actions have been both objectively reasonable, and in good faith. The show-cause order should be discharged.

If this Court were to hold that the Case Management Statement, as originally submitted, was not in proper form, Plaintiffs’ undersigned counsel would be pleased to re-submit a new Case Management Statement (in cooperation with Defendant’s counsel) which will conform to whatever directive the Court may issue.

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Meyer). *But see, contra: Bhatia v. Office of U.S. Atty., Northern Dist. of Cal.*, 2011 WL 1298763 (N.D. Cal. 2011).

1 Dated: 7 September 2022

Respectfully submitted,

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[RESPONSE TO ORDER TO SHOW CAUSE.wpd]